

Mr. Jenkins testified that claimant was asked if the problems were related to his job and claimant said no. Additionally both claimant and Mr. Jenkins testified that claimant did not request medical treatment for these injuries. Claimant also acknowledged that he did not request that an accident report be filled out.

Bryan D. Wood, respondent's fabrication supervisor, testified that when he was told that claimant was going to a doctor, he inquired of claimant if the condition was work related. Claimant told him it was not work related, but was from a prior injury. Additionally, claimant did not request medical treatment or to fill out an accident report.

A leave of absence form was filled out on April 13, 2005. This form, which was signed by claimant, listed the purpose of the leave as "Medical". However, a box listing "Job Related Injury/Illness" was not marked.

Claimant was examined by Tariq B. M. Niazi, M.D., on April 13, 2005. The April 13 medical note from Dr. Niazi indicated that claimant was a 53-year-old, white gentleman who "fell in Coffeyville" and "complains of pain going up and down the arm on the left side."¹ The medical report contains no indication of a work-related injury, although it does note that claimant works for respondent. The progress note from Dr. Niazi's office from May 4, 2005, indicates claimant's problems have existed for at least six months. Again, there is no mention of a work-related connection to claimant's injuries.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.²

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.³

K.S.A. 44-520 requires notice be provided to the employer within 10 days of an accident.

Here, the ALJ determined that claimant had failed to sustain his burden of proof that he provided notice of a work-related accident pursuant to K.S.A. 44-520. The Board agrees and affirms the ALJ's denial of benefits in this matter.

¹ P.H. Trans., Cl. Ex. 1.

² K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

³ *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

As is always the case, these findings are not binding upon a full hearing on the claim but shall be subject to a full presentation of the facts.⁴

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Thomas Klein dated April 13, 2006, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July, 2006.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Douglas C. Hobbs/Janell Jenkins Foster, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ K.S.A. 44-534a(a)(2).